

## **REMARKS**

Claims 22-73 are pending in the Application and all have been rejected in the Office action mailed May 21, 2008. Claims 22, 26, 57, 70, 72, and 73 are amended, claim 66 is cancelled, and new claims 74-89 are added by this response. Claims 22, 44, 57, 70, and 74 are independent claims from which claims 23-43, 45-56, 58-65 and 67-69, 71-73, and 75-89 depend, respectively. Applicants request reconsideration of pending claims 22-65 and 67-73, and consideration of new claims 74-89, in light of the remarks set forth below.

Claims 22, 23, 25, 38-45, 55-58, 63-66, and 69 were rejected under 35 U.S.C. §102(a) as being anticipated by Gillig et al. (US 5,367,558, hereinafter "Gillig"). Claim 24 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Davis et al. (US 5,453,986, hereinafter "Davis"). Claims 26, 27, 46, 47, 59, and 60 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Rom (US 5,515,509). Claims 28, 29, 48, 49, and 61 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Antunes et al. (US 5,414,731, hereinafter "Antunes"). Claims 30 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Sonnendorfer et al. (US 5,406,271, hereinafter "Sonnendorfer"). Claims 31, 32, 51, 52, and 62 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Perkins (US 5,159,592). Claims 33, 34, 53, and 54 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Allard et al. (US 5,422,656, hereinafter "Allard"). Claim 35-37, 67, and 68 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Fishbine et al. (US 5,222,152, hereinafter "Fishbine"). Claims 70-72 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Davis. Claim 73 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Davis in view of Fishbine. Applicants respectfully traverse the rejections.

Notwithstanding, Applicants have amended claims 22, 57, and 70 to include a feature of claim 66, and claim 26 to correct a minor claim drafting error. Applicants respectfully submit that these amendments do not add new matter.

## **I. Gillig Does Not Anticipate Claims 22, 23, 25, 38-45, 55-58, 63-66, And 69**

Claims 22, 23, 25, 38-45, 55-58, 63-66, and 69 were rejected under 35 U.S.C. §102(a) as being anticipated by Gillig.

With regard to anticipation rejections, MPEP 2131 states, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

With regard to claim 22, Applicants respectfully submit that claim 22 has been amended to recite, in part, "...wherein the at least one processor evaluates a cost of use of a communication network and establishes the exchange of information based upon the cost." Applicants respectfully submit that Gillig does not teach or suggest at least this aspect of Applicants' amended claim 22. The Office asserts at page 6, with respect to the rejection of Applicants' claim 66, that Gillig discloses "...evaluating a cost of use of a communication network (col. 1 lines 30-39; col. 5, lines 44-66)...." Applicants now address the teachings of Gillig at col. 1, lines 30-39, which is shown below, underlined:

In the prior art, cordless telephones typically are used in the home to allow the user to place and receive telephone calls at any point throughout the house. Such cordless telephones are connected to the user's telephone landline. However, due to their limited range, such cordless telephones are not suitable for use in vehicles. Vehicular communications are typically achieved by means of radio telephone systems, the most prevalent being cellular telephone systems. A cellular telephone allows the user to place and receive telephone calls at any point throughout a large metropolitan area. However, the cost of a cellular telephone call is as much as seven times the cost of a cordless telephone call, since cordless telephone calls are made by way of the user's telephone landline and cost the same as landline telephone calls, while cellular telephone

calls are made by way of expensive cellular base stations and cellular switching equipment and cost much more than landline telephone calls.

(emphasis added)

The cited portion of Gillig shown above teaches that cordless telephones have limited range and are not suitable for use in a vehicle, that cellular telephones permit calls to be placed and received throughout a large area, and that the cost of cellular calls are more expensive than calls made over a landline using a cordless phone. This portion of Gillig does not, however, teach or suggest, at least, "...[a] multi-mode communication device comprising: ... at least one processor ... wherein the at least one processor evaluates a cost of use of a communication network and establishes the exchange of information based upon the cost...", as recited by Applicants' amended claim 22. The cited portion of Gillig fails to say anything about "...evaluat[ing] a cost of use of a communication network...", or about "...establish[ing] the exchange of information based upon the cost...." Therefore, Applicants respectfully submit that Gillig at column 1, lines 30-39 fails to teach or suggest at least this aspect of Applicants' amended claim 22.

Applicants now turn to the alleged teachings of Gillig at column 5, lines 44-66, which are shown below, underlined:

Referring now to FIG. 6, there is illustrated a flow chart for the process used by the CCTs 100 and 200 in FIGS. 2 and 3, respectively, for receiving a telephone call as a cellular telephone call or a cordless telephone call according to user selectable preference stored in the memory of microcomputers 130 and 230.

Entering at block 500, the user activates the CCT. Next, at decision block 502, a check is made to determine if a call is being received by the CCT. If not, NO branch is taken back to decision block 502. If a call has been received, YES branch is taken from decision block 502 to decision block 504 to determine if the user's system preference matches the system of the incoming call. If so, YES branch is taken to decision block 508 to determine if the call is on the cordless system. If so, the YES branch is taken to block 510 where the incoming call is connected as a cordless call. If not, the NO branch is taken to block 512 where the incoming call is connected as a cellular call.

Returning to decision block 504, if the user's system preference does not match the system of the incoming call, NO branch is taken to decision block 506 to determine if the preference is for the cordless system. If so, the YES branch is taken to decision block 514 to determine if the CCT is within range of the cordless base station (e.g., by sending the transmit security code and waiting for the receive security code from the cordless base station). If not, the NO branch is taken to block 512 where the incoming call is connected as a cellular call. If the cellular cordless telephone is within range of the cordless base station, YES branch is taken from decision block 514 to decision block 516 to determine if the cellular system will forward the unanswered incoming call to the landline of the cordless base station when the cellular phone cannot be reached. This type of service is generally referred to as "call forwarding" (a process which redirects a call from the dialed cellular telephone number of CCT 10 to the landline telephone number of cordless base station 180) and can be determined by polling stored information in the memory associated with the CCT microcomputer. If call forwarding service is not available, NO branch is taken to block 512 where the incoming call is connected as a cellular call. If the cellular system will forward the unanswered incoming call, YES branch is taken from decision block 516 to block 518 where the cellular page from the cellular base station is ignored and thereafter to decision block 502 to wait for the incoming call to be received as a cordless call.

The cited portion of Gillig shown above teaches a process for receiving a telephone call by a "cellular cordless telephone (CCT)" according to Gillig. The process of Gillig checks whether a call is being received and, if so, whether the "system of the incoming call" matches the user's "system preference". The call is then taken as a cellular or cordless call depending upon the "system of the incoming call" and the "system preference" of the user. Gillig teaches, at column 5, lines 14-19, that a "user selectable preference" is stored in the memory of microcomputers 130 and 230, and that the system selects cordless or cellular operation based upon the stored "system preference" of the user. The cited portion of Gillig shown above does not, however, teach or suggest, at least, "...[a] multi-mode communication device comprising: ... at least one processor... wherein the at least one processor evaluates a cost of use of a communication network and establishes the exchange of information based upon the

cost...", as recited by Applicants' amended claim 22. The cited portion of Gillig at column 5, lines 44-66 fails to say anything about "...evaluat[ing] a cost of use of a communication network...", or about "...establish[ing] the exchange of information based upon the cost..." Instead, Gillig teaches that a user "system preference" ("cordless" or not) is stored in memory of a microcomputer, which decides whether to arrange to take the call as "cellular" or "cordless" based upon the "system of the incoming call" and the user "system preference". The cited portion does not even mention "cost". Therefore, Applicants respectfully submit that Gillig at column 5, lines 44-66 also fails to teach or suggest at least these aspects of Applicants' amended claim 22.

Applicants have reviewed the teachings of Gillig and have been unable to find where Gillig teaches "...[a] multi-mode communication device comprising: ... at least one processor ... wherein the at least one processor evaluates a cost of use of a communication network and establishes the exchange of information based upon the cost...", as recited by Applicants' amended claim 22. If Applicants have inadvertently overlooked such teachings, Applicants respectfully request that the Office specifically identify the relevant portion of Gillig, along with a detailed explanation of how and why the cited portion of Gillig teaches Applicants' claimed feature.

Based at least upon the above, Applicants respectfully submit that Gillig fails to teach each and every element of Applicants' amended claim 22, as required by M.P.E.P. §2131, that Gillig fails to anticipate Applicants' amended claim 22, and that claim 22 as amended is allowable over Gillig. Because claims 23-43 depend from allowable claim 22, Applicants respectfully submit that Gillig fails to anticipate claims 23-43 as well, and that claims 23-43 are also allowable over Gillig. Accordingly, Applicants respectfully request that the rejection of claims 22, 23, 25, and 38-43 under 35 U.S.C. 102(a) be reconsidered and withdrawn.

With regard to claim 44, Applicants respectfully submit that claim 44 recites, in part, "...[a] wireless network access device comprising: ... at least one processor communicatively coupled to the first receiver and transmitter and the second receiver and transmitter, the at least one processor capable of establishing communication of

information between the first wireless communication network and the second wireless communication network based upon a call setup request received from one of the first wireless communication network and the second wireless communication network;....” Applicants respectfully submit that claim 44 is rejected for the same reasons set forth for the rejection of claim 22. Claims 22 and 44 do not, however, recite the same features. For example, the Office has failed to even address Applicants’ claimed feature “...establishing communication of information between the first wireless communication network **and** the second wireless communication network based upon a call setup request received from one of the first wireless communication network and the second wireless communication network....” The Office has failed to show any support in Gillig that teaches anything in this regard. Therefore, Applicants respectfully submit that the Office has failed to show where Gillig teaches each and every element of Applicants’ claim 44, as required by M.P.E.P. §2131, and has therefore failed to establish a *prima facie* case of anticipation. Applicants respectfully submit that for at least this reason, Applicants’ claim 44 is allowable over Gillig. Because claims 45-56 depend from Applicants’ claim 44, Applicants respectfully submit that claims 45-56 are also allowable over Gillig. Accordingly, Applicants respectfully request that the rejection of claims 44, 45, 55, and 56 under 35 U.S.C. §102(a) be reconsidered and withdrawn.

With regard to claim 57, Applicants respectfully submit that claim 57 has been amended to include features of Applicants’ dependent claim 66, which has been cancelled. Applicants’ claim 57 now recites, in part, “...evaluating a cost of use of a communication network;...” and “... selecting at least one wireless communication interface from the plurality of wireless communication interfaces based upon the type of call and the cost;....” Applicants respectfully submit that Gillig does not teach at least these features of Applicants’ amended claim 57, for at least the reasons set forth above with respect to Applicants’ amended claim 22. Therefore, Applicants respectfully submit that Gillig does not teach each and every element of Applicants’ amended claim 57, as required by M.P.E.P. §2131, and that Gillig does not anticipate amended claim 57.

Based at least upon the above, Applicants respectfully submit that amended claim 57 is allowable over Gillig. Because claims 58-69 depend from allowable claim

57, Applicants respectfully submit that Gillig also fails to anticipate dependent claims 58-69, for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 57, 58, 63-66, and 69 under 35 U.S.C. §102(a) be reconsidered and withdrawn.

## **II. The Proposed Combinations Of Gillig With Any Of Davis, Rom, Antunes, Sonnendorfer, Perkins, Allard, And Fishbine Do Not Render Claims 24, 26-37, 46-54, 59-62, 67, And 68 Unpatentable**

Applicants respectfully submit that claims 26-37, 46-54, 59-62, 67, and 68 were rejected under 35 U.S.C. §103(a) as being unpatentable over various combinations of Gillig with Davis, Rom, Antunes, Sonnendorfer, Perkins, Allard, And Fishbine.

Applicants respectfully submit that the Office action has failed to establish a *prima facie* case of obviousness, in accordance with M.P.E.P. §2142. According to M.P.E.P. §2142, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." M.P.E.P. §2142 further states that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." As recognized in M.P.E.P. §2142, "[t]he Supreme Court in *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007), 82 USPQ2d 1385, 1396 noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." In addition, the Federal Circuit has made clear that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 127 S. Ct. 1727 (2007), 82 USPQ2d at 1396.

Applicants respectfully submit that independent claims 22, 44, and 57 are allowable over the various proposed combinations of Gillig with Davis, Rom, Antunes, Sonnendorfer, Perkins, Allard, And Fishbine, in that the Office has failed to show where any teachings of Davis, Rom, Antunes, Sonnendorfer, Perkins, Allard, and Fishbine remedy the shortcomings of Gillig set forth above. Because independent claims 22, 44,

and 57 are allowable over the proposed combinations of Gillig, Davis, Rom, Antunes, Sonnendorfer, Perkins, Allard, and Fishbine, Applicants respectfully submit that claims 24, 26-37, 46-54, 59-62, 67, and 68 that depend therefrom are also allowable, for at least the same reasons. Accordingly, Applicants respectfully request that the rejections of claims 24, 26-37, 46-54, 59-62, 67, and 68 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

### **III. The Proposed Combination Of Gillig And Davis Does Not Render Claims 70-73 Unpatentable**

Claims 70-72 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Davis. Claim 73 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Davis in view of Fishbine.

With regard to independent claim 70, Applicants respectfully submit that claim 70 has been amended to recite, in part, "...[a] system supporting communication over a plurality of wireless networks, the system comprising: ... a processing circuit for evaluating a cost of use of a communication network and managing operation of the transceiver circuitry in order to establish voice communication via at least one of the first and second wireless communication networks, selecting one of the first and second wireless communication networks based upon at least one of a mode of communication and the cost of use of a communication network." The Office asserts that Gillig discloses "...the processor circuit selecting one of the first and second wireless communication networks based upon at least one of a mode of communication and a cost of use of a communication network (Figure 6, #'s 500, 502, 504, 506, 508, 510, 512, the call is established based on the preference of network; that is, either cellular or cordless; (col. 1, lines 30-39; col. 5, lines 44-66: Figure 6, #'s 500-518, the preference of the systems [sic] is based on the cost of the communication via the systems, thus, selecting the least expensive one: col. 4, lines 41-45, the user activates the phone." See Office action at page 11. Applicants respectfully disagree, and note that the Office cites only Gillig in its rejection of these aspects of Applicants' claim 70.

Applicants have already addressed, above, the alleged teachings of the cited portions of Gillig at column 1, lines 30-39 and column 5, lines 44-66, and have shown



that Gillig does not teach or suggest "...evaluat[ing] a cost of use of a communication network..." and "...establish[ing] the exchange of information based upon the cost...."

In addition, Applicants respectfully submit that there is nothing in Fig. 6 of Gillig that says anything about cost. According to Gillig, at column 1, line 66 - column 2, line 2, Fig. 6 is "...a flow chart for the process used by the cellular cordless telephones in FIGS. 2 and 3 for receiving a telephone call as a cellular telephone call or a cordless telephone call according to user selectable preference." (emphasis and underline added) Applicants respectfully submit that in contrast to the features of Applicants' claim 70, Gillig teaches **not** cost of use of a communication network, but a telephone that selects a communication network based upon a user preference ("cellular" or "cordless").

To illustrate, if the costs of use of landline and cellular communication networks changed, the selection of communication network by the "cellular cordless telephone" of Gillig would not change. Also, if the user set the "system preference" incorrectly, the "cellular cordless telephone" of Gillig would not select the less expensive communication network. Therefore, the selection of communication network by the "cellular cordless telephone" of Gillig uses "system preference" of a user, and "system of the incoming call", but does not select based upon cost of use of a communication network.

In addition, Applicants respectfully submit that Gillig fails to teach that the "cellular cordless telephone" of Gillig "evaluat[es] a cost of use of a communication network...", as recited by amended claim 70. Gillig is simply silent in this regard.

Based at least upon the above, Applicants respectfully submit that Gillig fails to teach at least these aspects of Applicants amended claim 70. Further, the Office has failed to show where Davis remedies these shortcomings of Gillig. Because the Office has failed to show where either Gillig or Davis teach these features of Applicants' amended claim 70, Applicants respectfully submit that the Office cannot provide a "...clear articulation of the reason(s) why the claimed invention would have been obvious...", recognized by M.P.E.P. §2142 as "[t]he key to supporting any rejection under 35 U.S.C. 103...." Therefore, Applicants respectfully submit that a *prima facie*

case of obvious cannot be established, and that the proposed combination of Gillig and Davis does not render obvious amended claim 70, or any claims that depend therefrom.

Therefore, Applicants believe that independent claim 70 as amended is allowable over Gillig and Davis. Applicants also respectfully submit that claim 70 is allowable over the proposed combination of Gillig, Davis, and Fishbine, in that Fishbine fails to overcome the deficiencies of Gillig and Davis set forth above. Applicants respectfully submit that claim 70 is allowable over Gillig, Davis, and Fishbine, and further, that claims 71-73, which depend from allowable claim 70, are also allowable, for at least the same reasons. Applicants respectfully submit, therefore, that all of claims 70-73 are allowable, and respectfully request that the rejection of claims 70-73 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

### **Newly Added Claims**

Applicants have added new claims 74-89, which are similar in many ways to pending claims 22-43. New claim 74 is an independent claim from which claims 75-89 depend. Applicants respectfully submit that new claims 74-89 do not add new matter and are allowable for at least the reasons set forth above with respect to claims 22-43.

### **Conclusion**

In general, the Office Action makes various statements regarding the claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

An early Office Action on the merits and allowance of claims 22-89 is respectfully requested.

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The Commissioner is hereby authorized to charge any fees required by this submission to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

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